

Judge Gonzales finds the Geneva Conventions to be an impediment, a hindrance to our present efforts, quaint and obsolete in important respects. Others are claiming that the administration had refused to apply the Geneva Conventions to the conflict in Afghanistan:

Afghanistan was the first time in which we said that it did not apply to a conflict.

Senators have accused the administration of taking its obligations under the Geneva Conventions lightly.

The administration has fully and faithfully adhered to its obligations under the Geneva Conventions. Judge Gonzales's critics meld together two different issues: First, whether the Geneva Conventions apply to a particular armed conflict and, second, whether particular individuals in that conflict are entitled to a particular protected status under one of the Geneva Conventions. The mere fact that the Geneva Conventions apply to a conflict between two nations does not mean that all persons involved in that conflict qualify for a particular status, such as prisoner-of-war status, under the terms of the conventions.

The administration and Judge Gonzales have been very clear in separating the two issues. But as demonstrated in the claims made above, Judge Gonzales's critics have sought to confuse the issue by mixing the two questions.

The administration did not determine that the Geneva Conventions did not apply in enemy conflict in Afghanistan. Rather the President determined that the Geneva Conventions do, indeed, apply to the conflict in Afghanistan, but that neither al-Qaida terrorists nor Taliban fighters qualify for prisoner-of-war protections under the Geneva Conventions.

This obvious distinction is grounded in the very text of the Geneva Conventions. This has been ignored by Judge Gonzales's critics. The judge explained the distinction quite clearly in his testimony before the Judiciary Committee. He stated this:

There was a decision by the President that Geneva would apply with respect to our conflict with the Taliban. However—and I believe there is little disagreement about this as a legal matter—because of the way the Taliban fought against the United States, they forfeited their right to enjoy prisoner-of-war legal protections.

Judge Gonzales has repeatedly affirmed his respect for the Geneva Conventions. He has worked to ensure that we protect Americans from the threat of terrorism, while treating al-Qaida and Taliban detainees humanely and, to the extent appropriate and consistent with military necessities, in keeping with the principles of the Geneva Conventions.

Judge Gonzales has also stated further at the hearing:

I consider the Geneva conventions neither obsolete nor quaint.

In closing, we have an outstanding nominee in judge Gonzales. His per-

sonal background is one of incredible accomplishments. His ability and his legal mind are excellent. His commitment to public service is tremendous. The faith that people have in him is there and is what we need in a person who is Attorney General of the United States. We need to have a person there that people look up to and say this is a person who will uphold the law, who is an upright individual, and will do all he can to make this a better place. Judge Gonzales will do all of those things and he will do it in a tremendous fashion.

I don't think this is a particularly helpful or good debate, where we question a person's ability to stand independent, or to do these other things, when that person stated clearly he would and his past track record has shown that he will.

For those reasons, I hope we can move expeditiously through this debate. Let people question his ability if they choose, but let's have the vote and get Judge Gonzales approved to serving this country in this important time and in this very important job.

Mr. KOHL. Mr. President, in many ways, Judge Gonzales's life story is the American dream—rising from humble beginnings to being nominated to be our Attorney General. Yet, Judge Gonzales must be evaluated on more than his life story; indeed, the decisions he has made in his public capacity must be closely scrutinized. We are, after all, being asked to confirm him as the Nation's chief law enforcement officer.

We begin with a standard of granting deference to the President to surround himself with the people he chooses for his Cabinet. But that deference is not absolute. The Attorney General is not the President's lawyer, but the people's lawyer. As I listened to the nominee's answers at his confirmation hearing, read his responses to our additional questions, and examined the facts, I found that my deference was challenged. Indeed, we are being asked to confirm the administration's chief architect of its legal policies in the war on terror—policies with questionable legal support that have proven harmful to the conduct of the war and injured our reputation abroad.

We must expect more from our Attorney General. The war on terrorism has proven more clearly now than ever before that the Justice Department's mission is too central to our democracy to be entrusted to someone who leaves us with such doubt. As the President's chief legal officer in the White House, Judge Gonzales's advice sadly fell short time and again. For these reasons, I must vote no.

A closer examination of the administration's legal policies demonstrates why we have reached this conclusion. Over the strong objections of Secretary of State Powell, career military lawyers, and others with great expertise, Judge Gonzales advised the President to deny prisoners the protections of the

Geneva Conventions. Others warned Judge Gonzales that this advice could undermine military culture, generate confusion about how to treat detainees, and ultimately lead to abuse. We now know that their worst fears were warranted.

His role in shaping the policy on torture was similarly regrettable. The "torture memo" that was drafted at Judge Gonzales's request stood as administration policy for 2 years. The Defense Department used the memo's disturbing conclusions to justify abusive interrogation techniques.

These policies have consequences. To defeat terrorism, the 9/11 Commission concluded that we must win the war of ideas in the Muslim world. The importance of this recommendation cannot be emphasized enough. Undermining our fundamental commitment to due process, failing to honor our international agreements, and flouting our laws prohibiting torture and war crimes harms that effort.

Judge Gonzales's performance at the hearing did little to alleviate our concerns. We heard him condemn torture, generally, but refuse to discuss what he thought constituted torture. We heard him commit to honor our international agreements but waffle when asked when they apply. We heard him denounce the abuses that were committed in Iraq but refuse to discuss whether they might be illegal. We heard him commit to hold anyone involved responsible for their actions but repeat predetermined conclusions about what happened and who was to blame.

When asked by members of the Judiciary Committee about his views on these policies and his roll in shaping them, Judge Gonzales either could not remember or was nonresponsive. When asked about whether he thought torture was ever productive, after more than 2 years of participating in discussions on the subject, he told the Committee, "I have no way of forming an opinion on that." He admits to attending meetings where specific methods of torture were discussed but told the committee that he cannot recall anything that was said. His evasiveness was not an encouraging preview or his ability to be candid with the American people about the basis of the decisions he will be responsible for making as our Attorney General.

This has not been an easy decision to reach. We hope that if Judge Gonzales is confirmed, he will prove us wrong. For now, however, our doubts are too great to support his nomination.

MORNING BUSINESS

Mr. BROWNBACK. Mr. President, I ask unanimous consent that there now be a period for the transaction of morning business, with Senators permitted to speak for up to 10 minutes each.

The PRESIDING OFFICER. Without objection, it is so ordered.